

**TESTIMONY OF MARY LOU LEARY**  
**Executive Director, National Center for Victims of Crime**

**Before the**  
**Subcommittee on Crime, Terrorism, and Homeland Security**  
**Committee on the Judiciary**  
**United States House of Representatives**

**“Advancing the Collection of Crime Victim Restitution”**

**February 16, 2006**

Good morning, Chairman Coble, ranking member Scott, and members of the Subcommittee. My name is Mary Lou Leary, and I am executive director of the National Center for Victims of Crime. The National Center is a nonprofit, resource and advocacy organization that recently celebrated our 20<sup>th</sup> year of championing the rights and interests of victims of crime. I appreciate the opportunity to appear before you this morning to address a topic of great importance: collecting the restitution owed to victims of crime.

This year marks the 10<sup>th</sup> anniversary of the federal Mandatory Victims Restitution Act of 1996.<sup>1</sup> In passing that Act, Congress intended to “ensure that the loss to crime victims is recognized, and that they receive the restitution that they are due” as well as “to ensure that the offender realizes the damage caused by the offense and pays the debt owed to the victim as well as to society.”<sup>2</sup> This 10<sup>th</sup> anniversary is an appropriate time to reflect on our performance in providing restitution to crime victims. The National Center has spent many years examining the issue of restitution, working with advocates and policymakers to promote best practices in implementing this key victims’ right.<sup>3</sup>

Unfortunately, an honest examination shows we’re doing a poor job in implementing this right, especially at the federal level. The most recent public figures show uncollected criminal debt at the federal level to be over \$25 billion—seventy percent of which is restitution owed to individuals and others harmed by defendants.<sup>4</sup> A study released last year by the GAO examined five high-dollar white collar financial fraud cases and found that only about seven percent of the restitution ordered in those cases was collected—up to eight years after the offender’s sentencing.<sup>5</sup> We simply must do better.

**Why enforcement of restitution orders is important**

The payment of restitution is of great importance to victims of crime. Some of the most heartbreaking restitution cases, particularly prevalent at the federal level, involve elderly victims who have lost their life savings to fraud. The crime robs them not only of their money, but their sense of security and even their ability to remain independent and live in their own home. The

ensuing depression and stress lead to a steep decline in their physical health. For these victims, restitution may preserve their future.

Even for victims who have not lost their life savings, restitution for the harm they sustained is important as they rebuild their lives. Repayment of their financial losses, including property losses, can be crucial in helping to repair the damages from the offense. It is also important as a tangible demonstration that the state, and the offender, recognize that the harm was suffered by the victim and that amends will be made.

Restitution is important for offenders as well. Courts have recognized that restitution is significant and rehabilitative because it “forces the defendant to confront, in concrete terms, the harm his or her actions have caused.”<sup>6</sup> In fact, a study that examined the connection between restitution and recidivism found that individuals who paid a higher percentage of their ordered restitution were less likely to commit a new crime.<sup>7</sup> Significantly, the payment of criminal fines did not have this effect, indicating that it is the act of reparation to the victim that is important.<sup>8</sup>

Enforcing orders of restitution is also important to our criminal justice system. When a criminal court has issued an order, and that order remains unenforced, respect for our justice system suffers. Victims lose faith, criminal justice system employees become cynical, and offenders learn that they will not be held accountable when they conduct themselves as if they are “above the law.”

### **What can we do?**

First, in appropriate cases, courts must have the ability to freeze assets prior to conviction. This is particularly necessary in cases involving financial fraud. The recent GAO report I spoke of earlier noted that many fraud defendants have significant financial resources at the start of the criminal case, but by the time of sentencing have dissipated, transferred, or hidden much of their wealth.<sup>9</sup> We must give prosecutors the tools to preserve assets in certain cases.

Some states already allow this. In Pennsylvania, prosecutors can seek a temporary restraining order in cases in which there is a substantial probability that the state will prevail, that restitution of more than \$10,000 will be ordered, and that failure to enter the order will result in the assets being unavailable for payment of the anticipated restitution.<sup>10</sup> In California, prosecutors may seek an order to prevent offenders from dissipating or secreting specified assets or property at the time of the filing of a complaint or indictment when a case involves a pattern of fraud and the taking of more than \$100,000.<sup>11</sup> Federal prosecutors should have a similar ability to preserve assets for restitution.

Second, we must provide more resources to collection efforts. Financial Litigation Units, or FLUs, established to pursue collection of federal debt in U.S. Attorneys’ offices, tell us they are understaffed.<sup>12</sup> No government program can be fully effective without adequate resources. We must make FLUs a funding priority. Many FLUs also turn to a program that provides additional, highly experienced asset investigators for specific cases, called the Financial Litigation Investigator Program. This program should be expanded, to make this tool more widely available.

Finally, we must create a system to provide immediate restitution to the neediest victims. Some victims, particularly vulnerable or frail seniors, cannot wait the years it may take to collect restitution from an offender. We must create a program that can provide restitution to them immediately, while the program is reimbursed by the defendant over time.

Such a program has been created in Vermont.<sup>13</sup> Victims of crime who are awarded restitution can immediately take their order to the state's Restitution Fund, where up to \$10,000 of the order is paid immediately. The Fund then collects from the offender. The Fund has been operational since July of 2004, and in its first year has paid 1,400 claims. Importantly, with a trained staff including collection analysts and an attorney, no restitution orders have been determined to be uncollectible.

These three steps would significantly improve the provision of restitution. The result would be a more complete recovery for crime victims, a restorative sentence for offenders, and a system that comes closer to the ideal of "doing justice."

Thank you for your time. I'd be happy to answer any questions.

---

<sup>1</sup> Pub. L. 104-132, title II, subtitle A (§201 et seq.), 110 Stat. 1227 (1996).

<sup>2</sup> S. Rpt. No.104-179, at 24 (1995).

<sup>3</sup> See, for example, National Center for Victims of Crime, "Restitution: Making it Work," OVC Legal Series Bulletin #5 (November 2002); National Center for Victims of Crime "Ordering Restitution to the Crime Victim," OVC Legal Series Bulletin # 6 (November 2002); National Victim Center, "1996 Victims' Rights Sourcebook: A Compilation and Comparison of Victims' Rights Laws," (Arlington, VA: National Victim Center, 1997).

<sup>4</sup> U.S. General Accounting Office, "Criminal Debt: Actions Still Needed to Address Deficiencies in Justice's Collection Processes," GAO-04-338 (Washington, DC: March 2004), 2. This figure excludes restitution owed to federal agencies.

<sup>5</sup> U.S. General Accounting Office, "Criminal Debt: Court-Ordered Restitution Amounts Far Exceed Likely Collections for the Crime Victims in Selected Financial Fraud Cases," GAO-05-08 (Washington, DC: January 2005), 3.

<sup>6</sup> *People v. Moser*, 50 Cal. App. 4<sup>th</sup> 130, 135 (1996).

<sup>7</sup> Cynthia Kempinen, "Payment of Restitution and Recidivism," *Research Bulletin* 2, No. 2 (State College, PA: Pennsylvania Commission on Sentencing, October 2002).

<sup>8</sup> *Id.*

<sup>9</sup> *Supra*, note 2, page 3.

<sup>10</sup> 42 PA Cons. Stat. § 9728 (2005).

---

<sup>11</sup> Cal. Penal Code § 186.11 (2006).

<sup>12</sup> See also U.S. General Accounting Office, “Criminal Debt: Court-Ordered Restitution Amounts,” 18.

<sup>13</sup> 2003 Vt. Acts & Resolves No. 57.